

In the Matter of License No. 89924

Issued to: HAROLD A. OLSEN

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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Harold A. Olsen

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 21 May, 1951, an Examiner of the United States Coast Guard at New York City suspended License No. 89924 issued to Harold A. Olsen upon finding him guilty of inattention to duty based upon two specifications alleging in substance that while serving as Master on board the American SS ARCHERS HOPE under authority of the document above described, on or about 5 March to 11 March, 1951, while said vessel was on a voyage from Venezuela to the Port of New York, and on or about 17 March to 24 March, 1951, while proceeding from Lake Charles, Louisiana, to Philadelphia, Pennsylvania, he navigated the ARCHERS HOPE "with the applicable load line submerged."

At the hearing, appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by an attorney of his own selection and he entered a plea of "not guilty" to the charge and each specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced evidence consisting of documentary evidence and the testimony of two witnesses.

In defense, Counsel for Appellant made an opening statement and offered in evidence certain documents in addition to Appellant's testimony under oath in his own behalf.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the specifications and entered the order suspending Appellant's License No. 89924 and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority for a period of one month, beginning on the day that said license is deposited with the United States Coast Guard.

From that order, this appeal has been taken, and it is urged

that the charge and specifications do not constitute a statutory violation of the Load Line Acts of 1929 and 1935 (46 U.S.C. 85, 88); and that the charge and specifications were not proven since the findings and decision of the Examiner are contrary to the facts submitted which prove that Appellant did exercise "reasonable care," as required by the above statutes, to prevent overloading.

APPEARANCES: Messrs. Nash, Ten Eyck, Maximov and Freehill of New York City
by Eli Ellis, Esquire, of Counsel.

Based upon my examination of the Record submitted, I hereby make the following

FINDINGS OF FACT

On 5 to 11 March and 17 to 24 March, 1951, Appellant was serving as Master on board the American SS ARCHERS HOPE and acting under authority of his License No. 89924 while said vessel was, on the respective dates, on voyages from Venezuela to the Port of New York and from Lake Charles, Louisiana, to Philadelphia, Pennsylvania.

The ARCHERS HOPE which is a T-2 class tanker has a moulded depth of 39 feet, 3 inches and a total depth of 39 feet, 4.75 inches from which her freeboard and draft are measured. As shown by her plimsoll mark which is in accordance with her International Load Line Certificate, the vessel is allowed a minimum amidships freeboard, in salt water, of 8 feet, 7.25 inches in tropical load line zones which permits a maximum mean draft of 30 feet, 9.5 inches to which she may be submerged. The summer zone limits are a freeboard of 9 feet, 2.75 inches and a mean draft of 30 feet, 2 inches; while in winter load line zones, the freeboard allowance is 9 feet, 10.25 inches, which permits a mean draft of not more than 29 feet, 6.5 inches. An additional submergence of 8.25 inches is applicable to all freeboard figures when the ship is in fresh water. Tables based on the density of water in various ports show that the percentage of the fresh water allowance permissible at Lake Charles and Philadelphia is 100 percent (8.25 inches). The permissible allowance for the berth at which the ship was docked in the Port of New York was 3.3 inches or 40 percent of the total fresh water allowance. (R. 27 and I.O. Exhibit 2.)

Prior to proceeding on her voyage from Venezuela to New York, the vessel was loaded with 15,067 net long tons of fuel oil at a dock in Amuay Bay, Venezuela. This is an unsheltered bay and the loading was accomplished in a surf with swells running approximately a foot high. After loading was completed, the Master and Chief Officer obtained a rough estimate of the fore and aft drafts by looking at the ship with binoculars at a distance of about 900 feet. The drafts forward and aft were both logged as 30 feet but there was a possibility of error of as much as one foot in reading the drafts.

The ARCHERS HOPE departed from Amuay Bay in the tropical load line zone on 5 March, 1951, and arrived at the Port of New York in the winter zone on 11 March, 1951. Upon mooring starboard side to at a dock in Linden, New Jersey, U. S. Customs Inspector Irving Schwartz, who was on the dock as the vessel came alongside, ascertained that her draft on the starboard side was 31 feet forward and 30 feet, 8 inches on the quarter and that the plimsoll mark on the starboard side

was completely submerged. Among his other duties, Mr. Schwartz has been taking the drafts of incoming American vessels for over fifteen years. He was accompanied and assisted by Mr. George J. Bedford, the Deputy Collector in charge of Customs at Newark, New Jersey. The two men then went aboard and reported to Appellant that the ship was overloaded. Appellant seemed surprised at this and mentioned that the vessel had a starboard list. The two Customs officers checked this information by observing a clinometer in a passageway amidships and noted that the vessel had a list to starboard of one degree or a little less than one degree. There was a tug boat at the ship's bow and Schwartz obtained the draft reading of 30 feet, 11 inches, on the port bow from the Captain of the tug. An accurate reading of the port quarter draft of 30 feet, 5 inches, was secured by the Third Officer who went down a Jacob's ladder to get this information.

The winter load line of the vessel, which was applicable in the Port of New York, permitted a maximum mean draft of 29 feet, 6.5 inches. This figure was increased to 29 feet, 9.8 inches, by adding the 3.3 inches fresh water allowance permissible due to the density of the water in which the vessel was floating. An average of four draft readings (starboard bow: 31 feet; port bow: 30 feet, 11 inches; starboard quarter: 30 feet, 8 inches; port quarter: 30 feet, 5 inches) shows that the mean draft was 30 feet, 9 inches which was equal to 30 feet, 5.7 inches, in salt water. Therefore, there was an average improper submergence of 11.2 inches of the vessel's freeboard. It is evident from the discrepancies between the port and starboard draft readings that these figures take into consideration the starboard list of the vessel.

On 19 March, 1951, the ARCHERS HOPE was alongside a dock at Lake Charles, Louisiana, which is in the summer load line zone, taking a cargo of fuel oil on board. The Chief Officer was supervising the loading and had received instructions from Appellant to shut off the loading when the draft of the vessel reached 30 feet, 10 inches. As the draft approached this mark, the Chief Officer reported to Appellant that he thought the ship was aground since she was going down very slowly. Loading was then stopped and the draft was observed by Appellant to be 30 feet, 10 inches, forward and aft, and it was logged as such. The ship was aground on a mud bank and was pulled off the bank into the channel by tugs. She then proceeded down the Calcasieu River and out to sea enroute to Philadelphia, Pennsylvania, without any further attempt having been made to check the draft of the vessel. There is no data in the record as to the amount of fuel oil which was received aboard at Lake Charles. This figure was not calculated until the vessel was at sea.

Upon arrival on 24 March, 1951, the ship was in the winter load line zone. She was moored alongside a dock at Petty's Island, Delaware River. Pursuant to a request from New York, Lieutenant Commander Thomas N. Kelley came aboard and informed Appellant that he had come to check the vessel's draft. Kelley and the Chief Officer read the draft together and agreed that it was 31 feet forward and 31 feet, 7 inches aft. This caused the mean draft of the ship to be 31 feet, 3.5 inches. Kelley then reported to Appellant that the ship was again overloaded.

The pertinent load line at Petty's Island was indicated by a mean draft of 30 feet, 2.75 inches - the total of the maximum permissible salt water draft of 29 feet, 6.5 inches and the fresh water allowance of 8.25 inches. Since the mean measurement of 31 feet, 3.5 inches, was 12.75 inches over the adjusted load line, the latter was improperly submerged by this amount. The same result

is arrived at by adjusting the actual mean draft of the vessel in order to compensate for the density of the water in the harbor (31 feet, 3.5 inches, less 8.25 inches equals the equivalent salt water draft of 30 feet, 7.25 inches) and then deducting from this figure the maximum permissible winter salt water draft of 29 feet, 6.5 inches.

There is no record of any prior disciplinary action having been taken against Appellant by the Coast Guard or the Department of Commerce during his 35 years at sea. He has been sailing as a licensed officer since 1931 and as a Master since 1945. Appellant is now 50 years of age.

OPINION

Appellant's main attack upon the Examiner's decision is based upon the contention that since the charges and specifications are based on the Load Line Acts of 1929 and 1935, the proof must comply with the statutory requirement that Appellant intentionally and knowingly permitted the overloading or that he failed to take "reasonable care" to prevent the ARCHERS HOPE from being loaded beyond her permitted draft.

It may be conceded that there is no proof in the record that Appellant intentionally and knowingly permitted his vessel to be overloaded. But my findings disclose that Appellant did fail to exercise reasonable care and attention to duty in order to avoid loading so as to submerge the applicable load line of the ship. The charge is "inattention to duty" which, in this case, connotes the failure to act as would a reasonably prudent man of the same station and under the same circumstances. Because of this, rather than due to the appearance of the words "reasonable care" in the statutes, the test is whether Appellant did, in fact, exercise reasonable care. The purpose of drawing this distinction is to make it clear that this is an administrative remedial proceeding and not a penal action for a statutory violation. And the requirement of "reasonable care" appears in the statutes only in connection with the imposition of penalties and fines. (See 46 U.S.C. 85g and 88g). The act of loading so as to submerge the loadline is unlawful regardless of the exercise of reasonable care. (See 46 U.S.C. 85c and 88c).

Concerning the first specification, the only accurate draft readings obtained after loading had been completed at Amuay Bay were those taken by the two Customs officials when the ship docked at Linden, New Jersey. The only question as to the accuracy of the mean draft of 30 feet, 9 inches, which is derived from these figures is based upon conflicting testimony as to the amount of starboard list when these readings were taken. Mr. Schwartz testified that the clinometer showed a list of "approximately one degree" (R. 16); Mr. Bedford stated that it was "a little less than one degree"; and the Master said that it was a three degree list to starboard. The difference between the starboard and port quarters drafts should have been about 4.4 inches if there was a one degree list. Since the actual difference between the two was 3 inches, the list to starboard must have been slightly less than one degree. Thus, the testimony of the two Customs officials is supported by the port quarter draft reading obtained by the Third Officer and Appellant's claim that there was a three degree list was adequately overcome by this evidence. The fact that the draft readings obtained by Appellant and the Chief Officer at Amuay Bay were not dependable is established by Appellant's own admission of possible error. He testified: "Well, I would say you can't get a good reading

within a foot." (R. 35)

Converting the arrival draft of 30 feet, 9 inches to the equivalent salt water draft of 30 feet 5.7 inches and adjusting this figure by Appellant's own estimate that the draft decreased 1.5 inches on each of the five days of the voyage due to the consumption of stores, water and bunker fuel, I am led to the conviction that there was an error of slightly more than a foot in the logged draft of 30 feet since these calculations indicate that the vessel's mean draft upon departure was 31 feet, 1.2 inches.

With respect to the second specification the readings and mean draft of 31 feet, 3.5 inches, which were ascertained by Lieutenant Commander Kelley when the vessel arrived at Petty's Island, are accepted by Appellant but he claims that the overloading resulted from an error as to the quantity of fuel oil received aboard which caused the grounding and Appellant's consequent error in judgment whereby he considered it more important for the safety of his vessel to get his vessel off the ground as quickly as possible rather than to discharge excess cargo.

In each of the two instances referred to in the specifications, the vessel departed from a tropical or summer load line zone and completed her voyage in winter load line zones. The Load Line Regulations (CG 176) provide that a vessel departing for sea should be loaded so that when crossing the boundary of a zone of less draft, "the vessel when crossing into the less favorable zone, will conform to the regulations and freeboard for the less favorable zone" (CG 176 sec. 43.019). As set forth in complete detail in my findings of fact the draft readings taken upon arrival at the two ports are substantial evidence that there was a violation of this regulation since the winter load line of the ship was submerged 11.2 and 12.75 inches, respectively, below the permissible level under the circumstances pertinent to the incidents alleged in the first and second specifications. In both cases, the vessel entered the winter load line zone when she crossed the parallel of 36 degrees North.

The remaining question is whether Appellant acted as a reasonably prudent man in permitting his ship to be overloaded on these two occasions. In order to determine that degree of care which would be reasonable in this case, we must consider the purpose and importance of the applicable statutes and regulations Appellant contends that in neither case was the safety of life or property in any way affected and that this is clear from the failure of any proof having been adduced that the overloadings interfered with the navigation or trim of the vessel. It is sufficient to say that the Load Line Acts were enacted as safety measures and not as a mere whim of Congress. The ship's International Load Line Certificate was issued on the basis of regulations promulgated pursuant to, and supplementary to, the statutes. The load line limitations provided for by the Certificate must be considered as making allowance for the minimum freeboard with which the ship may be safely navigated. These load lines indicate the drafts at which, for various conditions, there will still be left a sufficient percentage of reserve buoyancy to insure the safety of the vessel. This is not an appropriate proceeding in which to attack the load lines assigned to the vessel by the qualified experts of the American Bureau of Shipping which also issues the load line certificates. Since the failure to comply with these regulations might well endanger ships, cargoes and the lives of the entire personnel aboard the ships (particularly if the overloaded vessel were navigating in a heavy sea), it is obvious that a very high degree of care is required of Masters to make certain that

there is strict compliance with these statutes and regulations. It has been held that seamen are justified in leaving the ship in a foreign port when the vessel has been excessively loaded. The Sirius (D.C. Calif., 1891), 47 Fed. 825.

Considering the degree of care to be invoked, it is my opinion that Appellant did not exercise reasonable care and was inattentive to his duty, on both occasions, to guard against the possibility that his vessel would be navigating in an overloaded condition upon entering the winter load line zone or upon arrival at the point of destination.

Since Appellant realized that the draft readings which he took at Amuay Bay might be erroneous by as much as a foot, he was required to make allowance for this possibility. If he had done so, the maximum safe draft upon departing from Amuay Bay, assuming comparable error, would have been logged as approximately 29 feet instead of 30 feet. Of course, if the present error had been in the opposite direction, the vessel would have had freeboard about a foot in excess of the permissible minimum. But if more accurate draft readings could not be obtained at Amuay Bay because of the loading conditions, the burden was upon Appellant to take every precaution to insure that the ship was not at sea while submerged below the applicable limits. Nor is there any satisfactory explanation as to why Appellant did not attempt to ascertain the amount of freeboard or the draft of the ship other than by looking at her through binoculars at a distance of 900 feet. It seems unlikely that this could not have been done from a position closer to the vessel.

Appellant's argument that according to the deadweight scale of the vessel, her total load of 15,873 tons would produce a draft reading of approximately 29 feet, 11 inches, is not convincing. There is nothing in the record, other than this bare statement, to support such a claim. In any case, the amount of the total load is based partially upon an unsupported stipulation as to the weight of the bunker fuel, stores and water which were aboard.

At Lake Charles, the mean draft was observed to be 30 feet, 10 inches, while the ship was still resting on the bottom and Appellant did not later check the accuracy of this figure. Applying the fresh water allowance of 8.25 inches and allowing 1.5 inches for each of the five days of the trip, the estimated draft upon arrival at Petty's Island would have been 29 feet, 6.25 inches. This figure is just barely within the winter load line zone limitation of 29 feet, 6.5 inches. Since there was every reason to believe that the proper draft readings were more than 30 feet, 10 inches, Appellant certainly did not exercise the required degree of precaution to prevent overloading. No criticism is directed against Appellant's prompt action in having the tugs pull the ship off the mud bank but rather the fault lies in Appellant's failure to have taken appropriate action to check the loaded condition of his vessel when she was again navigating under her own power and to do something about it if found to be excessively loaded.

CONCLUSION

At both of the times in question, Appellant was navigating his ship with a mean draft of approximately one foot more than the maximum permitted by the International Load Line Certificate of the vessel. This means that the applicable load line was submerged by the same

distance and the permissible winter zone freeboard of 9 feet, 10.25 inches, was reduced by about ten percent. The probability is that because of the likelihood of sag in a fully loaded tanker, the actual distance of the amidships freeboard was less than that calculated by means of the fore and aft drafts of the vessel. There is no doubt that there were violations of the regulations and Appellant's conduct is ample evidence to show that he did not act with such prudence as was required under the circumstances. Therefore, the charge and specifications were proved by substantial evidence and this offense is too serious for me to mitigate the suspension of one month which was imposed by the Examiner.

ORDER

The Order of the Examiner dated 21 May, 1951, should be, and it is, AFFIRMED.

Merlin O'Neill
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 21st day of September, 1951.